

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ITV DIRECT, INC.,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 04-CV-10421-JLT
)	
HEALTHY SOLUTIONS, LLC, et al.,)	
)	
Defendants.)	
)	
CAPPSEALS, INC.,)	
)	
Plaintiff-in-Intervention,)	
)	
v.)	
)	
HEALTHY SOLUTIONS, L.L.C., d/b/a)	
DIRECT BUSINESS CONCEPTS; ITV)	
DIRECT, INC.; and DIRECT FULFILLMENT,)	
LLC,)	
)	
Intervenor-Defendants.)	
)	

**ANSWER OF INTERVENOR-DEFENDANTS
ITV DIRECT, INC. AND DIRECT FULFILLMENT, LLC**

The Intervenor-Defendants ITV Direct, Inc. ("ITV") and Direct Fulfillment, LLC ("Direct Fulfillment") (collectively, "Defendants") by and through its undersigned attorneys, answer the Complaint-in-Intervention as follows:

PARTIES AND JURISDICTION

1. Defendants admit the allegations contained in Paragraph 1 of the Complaint in Intervention.
2. Defendants admit the allegations contained in Paragraph 2 of the Complaint in Intervention.

3. Defendants admit the allegations contained in Paragraph 3 of the Complaint in Intervention.

4. Defendants admit the allegations contained in Paragraph 4 of the Complaint in Intervention.

5. Defendants admit the allegations contained in Paragraph 5 of the Complaint in Intervention.

6. Defendants admit the allegations contained in Paragraph 6 of the Complaint in Intervention.

FACTS

7. Defendants deny the allegations contained in the first sentence of Paragraph 7. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in the second sentence of Paragraph 7. Defendants deny the remaining allegations contained in Paragraph 7 of the Complaint in Intervention.

8. Defendants admit that they have sold Supreme Greens with MSM through a Distribution Agreement that provided that purchases would be made from Healthy Solutions. Defendants deny the remaining allegations contained in Paragraph 8 of the Complaint in Intervention.

9. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in the first sentence of Paragraph 9. Defendants deny the remaining allegations contained in Paragraph 9 of the Complaint in Intervention.

10. Defendants deny the allegations contained in Paragraph 10 of the Complaint in Intervention.

11. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint in Intervention.

12. Defendants deny the allegations contained in Paragraph 12 of the Complaint in Intervention.

13. Defendants deny the allegations contained in Paragraph 13 of the Complaint in Intervention.

FIRST CLAIM FOR RELIEF

(Reach and Apply: DBC and ITV Direct)

14. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 13 as if fully set forth herein.

15. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint in Intervention.

16. Defendants deny the allegations contained in Paragraph 16 of the Complaint in Intervention.

17. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in first and second sentence of Paragraph 17. Defendants admit that ITV Direct has instituted legal proceeding against Healthy Solutions. Defendants deny the remaining allegations contained in Paragraph 17 of the Complaint in Intervention.

18. Defendants deny the allegations contained in Paragraph 18 of the Complaint in Intervention.

19. Defendants deny the allegations contained in Paragraph 19 of the Complaint in Intervention.

SECOND CLAIM FOR RELIEF

(Breach of Contract: DBC)

20. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 19 as if fully set forth herein.

21. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint in Intervention.

22. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 22 of the Complaint in Intervention.

23. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 23 of the Complaint in Intervention.

24. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph of the Complaint in Intervention.

THIRD CLAIM FOR RELIEF

(Breach of Contract: ITV Direct)

25. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 24 as if fully set forth herein.

26. Defendants deny the allegations contained in Paragraph 26 of the Complaint in Intervention.

27. Defendants deny the allegations contained in Paragraph 27 of the Complaint in Intervention.

28. Defendants deny the allegations contained in Paragraph 28 of the Complaint in Intervention.

29. Defendants deny the allegations contained in Paragraph 29 of the Complaint in Intervention.

30. Defendants deny the allegations contained in Paragraph 30 of the Complaint in Intervention.

FOURTH CLAIM FOR RELIEF

(Action on an Account: DBC)

31. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 30 as if fully set forth herein.

32. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 32 of the Complaint in Intervention.

33. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 33 of the Complaint in Intervention.

FIFTH CLAIM FOR RELIEF

(Account Stated: DBC)

34. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 33 as if fully set forth herein.

35. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 35 of the Complaint in Intervention.

36. Defendants have insufficient knowledge to form a belief as to the truth of the allegations contained in Paragraph 36 of the Complaint in Intervention.

SIXTH CLAIM FOR RELIEF

(Unlawful Business Practices: ITV Direct)

37. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 36 as if fully set forth herein.

38. Defendants deny the allegations contained in Paragraph 38 of the Complaint in Intervention.

39. Defendants deny the allegations contained in Paragraph 39 of the Complaint in Intervention.

40. Defendants deny the allegations contained in Paragraph 40 of the Complaint in Intervention.

41. Defendants deny the allegations contained in Paragraph 41 of the Complaint in Intervention.

SEVENTH CLAIM FOR RELIEF

(Unjust Enrichment: Defendants ITV Direct and Direct Fulfillment)

42. Defendants incorporate by reference the admissions, denials and averments contained in Paragraphs 1 through 41 as if fully set forth herein.

43. Defendants deny the allegations contained in Paragraph 43 of the Complaint in Intervention.

44. Defendants deny the allegations contained in Paragraph 44 of the Complaint in Intervention.

45. Defendants deny the allegations contained in Paragraph 45 of the Complaint in Intervention.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

One or more of Plaintiff-in-Intervention's causes of action fail to state a claim for which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention has not been damaged by any acts of the Intervenor-Defendants.

THIRD AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention had no contract with the Intervenor-Defendants and is not an intended third party beneficiary of any contract entered into by any defendant. All of Plaintiff-in-Intervention's claims are derivative of DBC's claims against ITV, and subject to all of ITV's

affirmative defenses and claims against DBC, its officers, directors, principals, parents, subsidiaries and affiliates.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred by the doctrine of waiver.

FIRTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's own acts are the cause of any alleged damages it has suffered.

SIXTH AFFIRMATIVE DEFENSE

One or more of Plaintiff-in-Intervention's claims are barred by the statute of frauds.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred in whole or part by the doctrine of unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred by the doctrine of laches.

NINTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred by the doctrine of estoppel.

TENTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's breach of contract claims are barred by a lack of consideration.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred by the doctrines of fraud and fraud in the inducement.

TWELFTH AFFIRMATIVE DEFENSE

Plaintiff-in-Intervention's claims are barred by the doctrines of anticipatory beach and repudiation.

WHEREFORE, Intervenor-Defendants ITV Direct, Inc. and Direct Fulfillment, LLC demand judgment of dismissal with prejudice as to all counts of Plaintiff-in-Intervention Cappseals, Inc. claims, plus costs and attorneys' fees.

Respectfully submitted,

ITV DIRECT, INC. and DIRECT
FULFILLMENT, LLC

By their attorney(s),

/s/ Peter S. Brooks

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